IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

SA.No. 22 of 1994()

AS.115/1993 of DISTRICT COURT, THALASSERY
OS.335/1982 of SUB COURT,THALASSERY
.....

APPELLANTS:APPELLANTS/PLAINTIFFS
---
1. N.N.RAJAN, S/O.NARAYANAN
MERCHANT, RESIDING AT LAKSHMI VILLA,
THIRUVANGAD, TELLICHERY.

2. YOUNGER BROTHER N.N.SADASIVAN
MERCHANT, DO DO.

BY ADV. SRI.K.V.SOHAN

RESPONDENTS/RESPONDENTS/DEFENDANTS
---
1. THE STATE OF KERALA REPRESENTED BY THE CHIEF
SECRETARY TO THE GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE COMMISSIONER FOR EXCISE, TRIVANDRUM.

3. THE ASSISTANT COMMISSIONER FOR EXCISE, CANNANORE.
4. THE DISTRICT COLLECTOR, CANNANORE DISTRICT
CANNANORE.
5. THE TAHSILDAR, TELLICHERY TALUK
TELLICHERRY.

BY GOVERNMENT PLEADER LATHA THANKAPPAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 15/ 6 /2007 THE COURT ON 15/06/2007 DELIVERED THE
FOLLOWING:

ORDER ON

M.SASIDHARAN NAMBIAR,J.

==========

S.A. NO.22 OF 1994

==========

Dated this the 15th day of June 2007

JUDGMENT

Plaintiffs in O.S.335/1982 on the file of Sub Court, Thalassery are the appellants. Defendants are the respondents. Appellants were contractors of arrack shop of Thalassery Range and they were granted exclusive right to sell arrack in shop No.1 to 27 of Thalassery Range for the period 1981-82. The kist amount due from plaintiffs was Rs.35,94,600/-. When revenue recovery proceedings were initiated for the balance kist amount due, suit was instituted contending that at the time of auction, Government has promised to supply enough quantity of arrack and it is based on the said assurance, appellants have auctioned the shops and inspite of the assurance, Government did not supply the quantity of arrack to meet the requirements of arrack shops. It was contended that out of the demand of 3,27,770 litres of arrack, Government

supplied 1,07,770 litres and so appellants sustained huge loss and therefore they are not liable to pay the entire kist amount and the Government is not entitled to realise the amount by kist. It was contended that appellants have paid Rs.25,16,220/- and only Rs.10,78,380/- remained and they sustained a loss of Rs.11 lakhs at the rate of Rs.5/- per litre of arrack supplied and inspite of that Government is demanding arrears of kist amount of Rs.10,78,380/-. It was also contended that after setting off the arrears of kist amount of Rs.10,78,380/- towards the damages of Rs.11 lakhs claimed by the appellants, they are entitled to recover Rs.21,360/-as damages. The suit was instituted claiming a decree for a permanent prohibitory injunction restraining respondents from initiating or taking any coercive steps under the Kerala Revenue Recovery Act for the recovery of the balance kist amount for the year 1981-82 and for realisation of Rs.21,620/- with interest as damages.

2. Second respondent in the written statement contended that there was no assurance to supply the arrack as demanded and the appellants are only entitled to that quantity of arrack supplied to them and therefore they are liable to pay the entire kist amount and appellants are not entitled to claim any damages and therefore the suit is to be dismissed. The other respondents also filed a similar written statement reiterating the contentions raised by the second respondent.

3.Learned Sub Judge framed the necessary issues. On the evidence of PW1, DW1 and Exts.A1 to A5 and B1 and B2 the learned Sub Judge dismissed the suit holding that the decision of this Court in **Issac v. Assistant Excise Commissioner & Others (1984 KLT 88)**has no application as there was no promise to supply excess quantity of arrack as claimed by the appellants. Appellants challenged the decree and judgment before District Court, Thalassery in A.S.115/1993. The learned District

Judge on reappreciation of evidence confirmed the finding of the learned Sub Judge and dismissed the appeal at the admission stage. The Second Appeal was filed challenging the said judgment.

4. The appeal was admitted formulating the following substantial question of law.

1) When maximum retail price is fixed and there is no possibility of getting arrack from open market and when by the sale of the entire quantity supplied is not possible to raise the total kist amount fixed, are not the respondents barred from claiming the entire kist amount by the principles of estoppel?

5. Learned counsel appearing for the appellants and learned Government pleader were heard.

6. The suit itself was instituted when recovery proceedings were initiated for realisation of the balance kist amount of Rs.10,78,380/-. The contention of appellants was that due to non-supply of the sufficient quantity of arrack they

could not run the arrack shops profitably and thereby they suffered a huge loss and therefore they are not liable to pay the entire kist amount. It was also contended that the supply of arrack was deficit to the tune of 2,20,000 litres and therefore appellants contended that they sustained a loss at the rate of Rs.5/- per litre and the total loss sustained is Rs.11 lakhs and deducting the kist amount claimed by respondents, they are entitled to realise Rs.21,620/- as damages. The suit was based on the foundation that at the time of the auction, there was a promise to supply sufficient quantity of arrack in addition to the monthly quota of arrack depending on the requirement and Government failed to comply with that obligation and therefore they are not liable to pay the entire kist amount.

7. The question whether the Government has the liability to supply the additional quantity of arrack as demanded by the contractors, in addition to the quota supplied was considered by a Division

Bench of this Court in Issac's case (supra). The Division Bench held that the State has a statutory obligation to supply the issue of such quantity of arrack in excess of the announced monthly quota as demanded by the contractor to meet the requirements and as the Government failed to fulfil the said requirement partially, State is estopped from demanding the payment of the full bid amount. But the said decision was reversed by the Apex Court in **Assistant Excise Commissioner v. Issac Peter (1994 (1) KLT 698).** Therefore as per the law declared by the Apex Court in Assistant Excise Commissioner's case (supra), appellants are not entitled to contend that Government has an obligation to supply additional quantity of arrack to meet their requirements as demanded by the appellants or that Government is estopped from claiming the entire kist amount as agreed to in the contract for the reason of failure to supply the additional quantity of liquor demanded.

8. Therefore the State is entitled to realise the balance kist amount due from the appellants and appellants are not entitled to the decree for damages sought for and rejected by the courts below. In view of the law as settled by the Apex Court, the substantial question of law is answered and the appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A..NO.22 /94

JUDGMENT

15th JUNE,2007